IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 108 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME-TAX

Versus

INDRARAJ TRUST

Appearance:

1. INCOME TAX REFERENCE No. 108 of 1995
MRS MAUNA BHATT WITH MR MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 28/01/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following questions of law have been referred for our opinion in respect of the assessment year 1984-85:-

"1. Whether, the Appellate Tribunal is right in law in holding that the status of the assessee should be 'individual'?

2. Whether the Appellate Tribunal is right in allowing the deduction under Section 80L of the Income-tax Act to the assessee?"

2. The assessee is a Trust. It derived income from partnership share, dividend and interest. The assessee was a discretionary Trust. The assessee claimed the status of 'individual' in the assessment for AY 1984-85. The ITO observed that for Ays. 1982-83 and 1983-84 the assessee had claimed the status of A.O.P. and that status had been granted to the assessee in those years. It was submitted before the ITO that the assessee was a discretionary Trust and was liable to be taxed at maximum marginal rate as applicable to an individual and hence the status of the assessee should be taken as that of individual. The assessee relied on decision of Tribunal in support of the plea. The ITO observed that the said decision had not been accepted by the department. He also held that the status of assessee shall be taken as A.O.P. but the tax would be charged at 67.5% applicable to individual as per provisions of section 164 of the Income-tax Act. On the basis of this finding, the ITO rejected the claim of the assessee for deduction u/s.80L of the Income-tax Act as deduction u/s. 80L was available to individual but was not available to A.O.P.

The assessee succeeded in Appeal before the CIT (Appeals) and the Tribunal confirmed the said decision. Hence this reference at the instance of revenue.

3. We have heard Mrs. Mauna Bhatt, learned Standing Counsel for the revenue. Though served, none appears for the respondent - assessee.

4. At the hearing of the reference today, our attention is drawn to the decision dated 6.11.2001 of this Court in ITR No. 152 of 1993 and connected references, wherein this Court has examined the decisions of this Court in the case of Commissioner of Income-tax v. Deepak Family Trust No.1 and others, (1995) 211 ITR

575, M.L. Family Trust v. State of Gujarat (1995) 213 ITR 152 and also the decision of the Apex Court in CWT v. Trustees of H.E.H. Nizam's Family (Remainder Wealth) Trust, (1977) 108 ITR 555. After examining the said decisions, this Court has held that the status of the trustees would be that of individual and Section 194A of the Income-tax Act would not apply and there was no question of deduction of tax at source under Section 201 (1A) of the Income-tax Act. The Court also held that the trust would be entitled to deduction under Section 80L.

Following the aforesaid decisions, we answer both the questions in the affirmative, i.e., in favour of the assessee and against the revenue.

The reference stands disposed of accordingly.

(M.S. Shah, J.) (A.M. Kapadia, J.)

(karan)